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OFFICE OF PETITIONS

In re Patent No. 6,975,891 :
Issued: December 13, 2005 :
Application No. 10/032,145 : PATENT TERM ADJUSTMENT
Filed: December 21, 2001 :
Dkt. No.: 11298/4 :
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PRIOR REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed February 13, 2006.

The application for patent term adjustment under 37 CFR 1.705(d) is hereby DISMISSED.

The above-identified application matured into U.S. Patent No. 6,975,891 on December 13, 2005. The patent issued with a PTA of 332 days. The instant application for PTA was timely filed February 13, 2006. Patentees herein refer to the application for patent term adjustment previously filed June 27, 2005 and decided September 27, 2005. Patentees continue to argue that the patent is entitled to additional adjustment under 37 CFR 1.702(b).

Patentees herein do not dispute the adjustment of 525 days attributable to the Office nor do patentees dispute the reduction of 193 days for applicant delay. Instead, patentees argue that the patent is entitled to an additional adjustment under 37 CFR 1.702(b) and 1.703(b) for the Office's failure to issue the patent within three years from the date the application was filed.

There were no adjustments accorded under 37 CFR 1.702(b) and 1.703(b) for failure to issue the patent within three years of the application filing date. This is because if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B) (and 37 C.F.R. § 1.704(b)), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining

whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the application that overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Red. Reg. 21704 (April 22, 2004).

No additional fee is due in connection with this matter.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

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